

qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employing office to part-time employees.

(4) At the end of the FMLA leave entitlement, an employing office is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employing office's FMLA obligations would be satisfied if the employing office offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employing office to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employing office may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employing office offer an employee the opportunity to take such a position. An employing office may not change the essential functions of the job in order to deny FMLA leave. *See* 825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employing office). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a light duty position. If the employing office offers such a position, the employee is permitted but not required to accept the position. *See* 825.220(d). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. *See* 825.207(e). If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA, as made applicable by the CAA.

(e) If an employing office requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by the employing office may not be denied maternity

leave if the employing office normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301, *et seq.*, veterans are entitled to receive all rights and benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning servicemember would be eligible for FMLA leave if the months and hours that he or she would have worked for the civilian employing office during the period of absence due to or necessitated by USERRA-covered service, combined with the months employed and the hours actually worked, meet the FMLA eligibility threshold of 12 months of employment and the hours of service requirement. *See* 825.110(b)(2)(i) and (c)(2) and 825.802(c).

(h) For further information on Federal antidiscrimination laws applied by section 201 of the CAA (2 U.S.C. 1311), including Title VII, the Rehabilitation Act, and the ADA, individuals are encouraged to contact the Office of Congressional Workplace Rights.

#### SUBPART H—[Reserved]

#### ORDERS FOR WEDNESDAY, DECEMBER 8, 2021

Mr. SCHUMER. Finally, Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Wednesday, December 8; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day and the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each; that the cloture motions filed during yesterday's session ripen at 11:30 a.m., and if cloture is invoked on the Rollins nomination, all postcloture time expire at 2:15; further, that if cloture is invoked on the Smith nomination, all postcloture time expire at 5:30 p.m.; finally, that if any of the nominations are confirmed during Wednesday's session, the motions to reconsider be considered made and laid upon the table and the President be immediately notified of the Senate's actions.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. SCHUMER. If there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 10:19 p.m., adjourned until Wednesday, December 8, 2021, at 10 a.m.

#### NOMINATIONS

Executive nominations received by the Senate:

#### IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

##### To be major

TODD E. MOSZER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

##### To be colonel

LARRY J. SAUNDERS, JR.

#### IN THE SPACE FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE GRADE INDICATED IN THE REGULAR SPACE FORCE UNDER TITLE 10, U.S.C., SECTIONS 531 AND 716:

##### To be colonel

MARC D. DANIELS  
JARED A. HOFFMAN  
SCOTT B. JOSSELYN  
LOUIS P. MELANCON  
NICHOLAS MONTALTO III  
JASON A. PARISH  
MARCUS D. STARKS  
JAY M. STEINGOLD

#### CONFIRMATIONS

Executive nominations confirmed by the Senate December 7, 2021:

##### NATIONAL MEDIATION BOARD

DEIRDRE HAMILTON, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 2022.

##### DEPARTMENT OF HOMELAND SECURITY

CHRIS MAGNUS, OF ARIZONA, TO BE COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY.

##### DEPARTMENT OF JUSTICE

CLARE E. CONNORS, OF HAWAII, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF HAWAII FOR THE TERM OF FOUR YEARS.

ZACHARY A. CUNHA, OF RHODE ISLAND, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF RHODE ISLAND FOR THE TERM OF FOUR YEARS.

NIKOLAS P. KEREST, OF VERMONT, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF VERMONT FOR THE TERM OF FOUR YEARS.

##### DEPARTMENT OF HOMELAND SECURITY

ERIK ADRIAN HOOKS, OF NORTH CAROLINA, TO BE DEPUTY ADMINISTRATOR, FEDERAL EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF HOMELAND SECURITY.

##### POSTAL REGULATORY COMMISSION

MICHAEL KUBAYANDA, OF OHIO, TO BE A COMMISSIONER OF THE POSTAL REGULATORY COMMISSION FOR A TERM EXPIRING NOVEMBER 22, 2026.

##### FEDERAL COMMUNICATIONS COMMISSION

JESSICA ROSENWORCEL, OF CONNECTICUT, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR A TERM OF FIVE YEARS FROM JULY 1, 2020.

##### DEPARTMENT OF JUSTICE

GREGORY K. HARRIS, OF ILLINOIS, TO BE UNITED STATES ATTORNEY FOR THE CENTRAL DISTRICT OF ILLINOIS FOR THE TERM OF FOUR YEARS.

PHILIP R. SELLINGER, OF NEW JERSEY, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW JERSEY FOR THE TERM OF FOUR YEARS.

BRANDON B. BROWN, OF LOUISIANA, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF LOUISIANA FOR THE TERM OF FOUR YEARS.

RONALD C. GATHE, JR., OF LOUISIANA, TO BE UNITED STATES ATTORNEY FOR THE MIDDLE DISTRICT OF LOUISIANA FOR THE TERM OF FOUR YEARS.

#### WITHDRAWAL

Executive Message transmitted by the President to the Senate on December 7, 2021 withdrawing from further Senate consideration the following nomination:

SAULE T. OMAROVA, OF NEW YORK, TO BE COMPTROLLER OF THE CURRENCY FOR A TERM OF FIVE YEARS, VICE JOSEPH OTTING, WHICH WAS SENT TO THE SENATE ON NOVEMBER 2, 2021.